

**INTERLOCAL AGREEMENT BETWEEN**  
**SAWS AND THE TOWN OF HOLLYWOOD PARK**

This Interlocal Agreement (the "Agreement") is entered into, in duplicate originals, and effective on this 7<sup>th</sup> day of August, 2012, by and between the San Antonio Water System, a wholly owned municipal water and sewer utility of the City of San Antonio, ("SAWS"), as authorized by SAWS Board Resolution No. 12-381, which was passed on August 7, 2012, and the Town of Hollywood Park ("Hollywood Park"), a general law municipality incorporated under the laws of the State of Texas, as authorized by the Hollywood Park City Council Ordinance No. 910, which was passed on July 17, 2012 together the "Parties."

**RECITALS**

**WHEREAS**, both parties intend this Agreement to be in compliance with Chapter 791 of the Government Code, cited as the Interlocal Cooperation Act (the "Act"), as a contract for the provision of facilities to provide wastewater billing services by SAWS on behalf of Hollywood Park; and

**WHEREAS**, SAWS owns and operates a water distribution system within Hollywood Park which will be initially operated as SAWS District Special Project (DSP); and

**WHEREAS**, Hollywood Park is a general law municipality located in the San Antonio area and is adjacent to SAWS' water and/or wastewater service areas; and

**WHEREAS**, the parties have specific authority under the Act to enter into an interlocal contract to provide the services contemplated hereunder; and

**WHEREAS**, Hollywood Park has offered to pay SAWS to provide Hollywood Park with billing services for sewer service charges to its customers; and

**WHEREAS**, SAWS has accepted the offer of Hollywood Park to perform such services on a year-to-year basis for up to a total term of five (5) years with a provision that service will continue to be provided after this term until a successor agreement is executed between the parties; and

**WHEREAS**, the functions and services specified in this Agreement are governmental functions or services that either party to the contract is authorized to perform individually; **NOW THEREFORE:**

The Parties hereto agree as follows:

**1.00 Purpose and Scope of Services.**

**1.01 Purpose.** The Parties acknowledge that the intent of this Agreement is for SAWS to provide Hollywood Park with billing services for sewer service charges to its customers.

**1.02 Scope of Billing Services**

- (a) SAWS shall only bill customers of Hollywood Park who also receive SAWS water service. SAWS shall bill such customers for Hollywood Park's sewer service charges at rates determined by Hollywood Park per month for each customer for each service and shall receive the payments made for such charges. Such rates are to be determined at the discretion of Hollywood Park and approved by the City Council of Hollywood Park, and as may be amended.
- (b) In addition to notifying SAWS of the initial rates to be billed for sewer services charges to each customer by SAWS, Hollywood Park shall notify its customers and SAWS in writing of any changes in the rates for sewer service charges including the dates such rates are to be applied to billing not less than thirty (30) days prior to the scheduled billing date of Hollywood Park's customers. Furthermore, if Hollywood Park establishes a sewer services rate in terms of a cost per hundred cubic feet, Hollywood Park shall provide SAWS a converted sewer service rate amount in terms of a cost per hundred gallons for use by SAWS for customer consumption billing purposes.
- (c) The first billing of the sewer services charges shall occur after SAWS has integrated the DSP billing system with the SAWS billing system resulting in a single, consolidated water and wastewater bill for Hollywood Park customers. Until SAWS notifies Hollywood Park that it is ready to distribute the first bills containing the sewer service charges to Hollywood Park customers, the existing interlocal agreement governing the collection of the sewer service charges between Hollywood Park and the Bexar Metropolitan Water District, dated October 26, 2010, shall remain in effect. SAWS shall bill Hollywood Park's customers thereafter at the same periods and on the same cycle of approximately 30 days' duration for which it bills for its own water service to said customers. SAWS shall utilize its standard billing and collection procedures.
- (d) Hollywood Park shall identify in writing a point of contact who is authorized to respond to billing services inquiries from SAWS herein described.

**2.0 Term and Expiration of Services**

**2.01** The effective date of this Agreement shall be on the date of execution by both parties and after the final approval by both the SAWS Board and the

Hollywood Park City Council. SAWS shall begin to provide services identified in the Agreement upon receipt of Hollywood Park's written authorization to proceed with the exception that the initiation date for collection of the sewer services charges by SAWS shall be subject to the provisions of Section 1.02(c) above.

**2.02** The term of this Agreement shall be renewed on a year-to-year basis up to five (5) years after the effective date. The terms of this Agreement may remain in effect after the expiration date until a successor agreement is executed between the parties so long as neither party notifies the other party in writing of its intent to terminate this Agreement.

### **3.00 Payment for Services**

**3.01** Billing Services Fees. Hollywood Park shall pay SAWS the following fees for its services related to billing and collection of charges:

- (a) \$0.76 per customer per billing period.
- (b) 0.8% of gross billings, excluding late fees, per billing period to cover uncollectible billings.
- (c) Such Fees are subject to change on January 1 of each year. The Fees will be based upon an allocation of SAWS' cost of providing customer service and billing functions. Prior to January 1 of each year, SAWS will notify Hollywood Park of any such adjustment in Fees.

### **3.02 Billing Services Remittance.**

- (a) By the 15<sup>th</sup> day of the first month after the month in which the last applicable billing cycle ended, SAWS shall furnish to Hollywood Park a Billable Consumption Report and a Billing Summary Report for sewer accounts.
- (b) After deducting (1) applicable per customer billing charges described in Section 3.01 (a) above; (2) 0.8% of gross billings to cover uncollectible billings, (3) all applicable customer late penalty fees, and (4) all applicable adjustments to sewer billings made as a result of customer inquiry according to SAWS' standard adjustment guidelines or at the request of Hollywood Park, SAWS shall remit the net amount to Hollywood Park under the following conditions: SAWS shall remit the net amount to Hollywood Park by the 15<sup>th</sup> day of the first month after the month in which the last applicable billing cycle ended.
- (c) Any adjustments or corrections needed to the above remittance to Hollywood Park shall be made by SAWS in the following month's remittance.

(d) The Sewer Accounts Billable Consumption Report and the Billing Summary Report to be provided to Hollywood Park by SAWS under Section 3.02(a) above (the "Reports") and the Winter Average Reports will be submitted in an electronic format mutually acceptable to both parties. Hollywood Park will designate in writing the name and contact information of the Hollywood Park employee to receive the Reports.

#### **4.00 Liability, Indemnity and Insurance.**

**4.01** SAWS shall not be responsible for any consequential or incidental damages of any kind or nature that result from or are related to SAWS' conduct under this Agreement.

**4.02** To the extent allowed by law, each party agrees to indemnify and hold harmless the other party, its officers, agents, and employees, from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorneys' fees, for injury to or death of any person, or for damage to any property, arising out of, or in connection with, SAWS' provision of billing services, contemplated under this Agreement, where such injuries, death or damages are caused by the joint negligence of each party, its employees, contractors, or agents. It is the EXPRESSED INTENTION of both parties to this Agreement that the indemnity provided for in this paragraph is INDEMNITY BY each party TO INDEMNIFY AND PROTECT the other party from the consequences of its own comparative share of negligence. Since SAWS shall be performing governmental functions on behalf of Hollywood Park, Hollywood Park shall further assist SAWS in asserting any and all sovereign governmental immunity rights or limitations in defending any claims made against SAWS related to any work performed on behalf of Hollywood Park.

**4.03** Both parties shall name the other party as an additional insured under its current respective insurance policy, maintain the additional insured requirement throughout the term of this Agreement, and furnish certificates of coverage to the other party upon request, including, a Certificate of Insurance coverage indicating the Commercial General Liability policy data and the Additional Insured endorsement.

**4.04** Billing errors. SAWS shall not be responsible to Hollywood Park or its customers for any over billings or under billings of Hollywood Park's sewer customers. Any refunds for overbillings will be paid for by, and be the responsibility of, Hollywood Park and Hollywood Park shall have the authority to decide whether to back bill customers who were under- billed.

**5.00 Alterations to Agreement and Scope of Work**

No amendments to this Agreement shall be considered valid by either Party unless they are in writing and approved by each Party's respective governing body.

**6.00 Default and Termination**

**6.01** If either Party breaches any term, or terms, of this Agreement, then the breaching party shall have thirty (30) days from the date that it receives written notification of the breach from the other Party to commence good faith efforts to cure such breach. If the breach has not been cured within a reasonable period of time, then the non-breaching Party may terminate this Agreement by providing thirty (30) days written notice of its intent to terminate.

**6.02** This agreement may be terminated at will by either party upon written notice by certified mail ninety (90) days in advance of the desired effective date of termination.

**7.00 Miscellaneous Provisions.**

**7.01 Assignment.** No assignment of this Agreement, in whole or in part for any purpose shall be made by either Hollywood Park or SAWS without the prior written consent of the other Party. Subject to this limitation, this Agreement shall bind and inure to the benefit of the successors and assigns of the Parties.

**7.02 Notices.** All written notices required by the terms of this Agreement shall be in writing and deposited in the United States mail addressed to such Party at the address set forth below:

**If to Town of Hollywood Park:**

Town of Hollywood Park  
Attn: William H. Bohlke, Mayor  
2 Mecca Drive  
San Antonio, Texas 78232

**If to SAWS:**

San Antonio Water System  
Robert R. Puente, President/Chief Executive Officer  
P.O. Box 2449  
San Antonio, Texas 78298-2449

These addressees and addresses may be changed by either Party by notice in writing to the other Party.

**7.03 Interpretation of Agreement.** This Agreement or any portion thereof shall not be interpreted by a court of law to the detriment of a Party based solely upon that Party's authorship of the Agreement or any portion thereof.

**7.04 Severability.** If for any reason, any one or more paragraphs of this Agreement are held legally invalid, such judgment shall not prejudice, affect, impair or invalidate the remaining paragraphs of the Agreement as a whole, but shall not be confined to the specific paragraphs, clauses, or paragraphs of this Agreement held legally invalid.

**7.05 Entire Agreement.** This Agreement constitutes the entire Agreement between the Parties hereto and supersedes all prior Agreements, understandings and arrangements, oral or written, between the parties thereto with respect to the subject matter hereof.

**7.06 Governing Law and Venue.** This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Texas and the venue for any cause of action shall be brought in Bexar County, Texas.

**7.07 Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to one and the same instrument.

**7.08 No Waivers.** The waiver by any party hereto of a breach of any term or provision of this Agreement shall not be construed as a waiver of any subsequent breach.

**7.09 Current Revenues Available and No Tax Revenue.** Both parties agree that any payments that are made under this Agreement for governmental functions or services will be made from current revenues available to the paying party. Tax revenue may not be pledged to the payment of amounts agreed to be paid under this Agreement.

**7.10 Authority to Agreement.** Hollywood Park hereby affirms that it has the authority to enter into this Agreement pursuant to a duly adopted resolution and/or ordinance of its City Council and that its Mayor/City Administrator has the authority to execute this Agreement. SAWS hereby affirms that it has the authority to enter into this Agreement pursuant to a duly adopted resolution of its Board of Trustees and that its President/Chief Executive Officer has the authority to execute this Agreement. Each party certifies that the services specified above are necessary and essential for activities that are properly within the statutory functions of each party and serve the interest of efficient and economical administration of each entity.


**7.11 No Third Party Beneficiaries.** Nothing in this Agreement shall entitle any third party to any claim, cause of action, remedy, or right of any kind, it being the

intent of the Parties that this Agreement shall not be construed as a third party beneficiary contract.

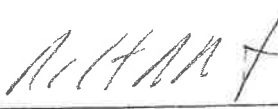
**7.12 Force Majeure.** If by reason of Force Majeure, SAWS shall be rendered unable in whole or in part to carry out its obligations under this Agreement in accordance with the terms and conditions of this Agreement, it shall not be considered a breach of this Agreement. The term "Force Majeure" as used in this Agreement shall mean acts of God, strikes, lock-outs, or other industrial disturbances, acts of the public enemy, orders of any kind of the federal or state government, or any civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, the partial or entire failure of SAWS, or any other causes not reasonably within the control of SAWS.

**7.13 Fair Compensation.** Both parties find that all payments described in this Agreement are in an amount that fairly compensates the performing party for the services or functions performed under this Agreement.

**TOWN OF HOLLYWOOD PARK:**

By:   
Name: William H. Bohlke  
Title: Mayor

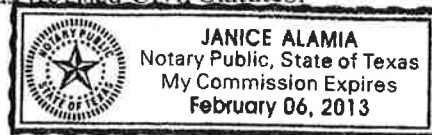
**SAN ANTONIO WATER SYSTEM:**

By:   
Name: Robert R. Puente  
Title: President/Chief Executive Officer

**ACKNOWLEDGMENTS**

STATE OF TEXAS           §  
                                     §  
COUNTY OF BEXAR       §

This instrument was acknowledged before me on July 17, 2012, by William Boulikie Mayor of Town of Hollywood Park, a body politic created \_\_\_\_\_, Texas Revised Civil Statutes.



*Janice Alamia*

Notary Public, State of Texas

STATE OF TEXAS       §  
                                  §  
COUNTY OF BEXAR   §

This instrument was acknowledged before me on August 30, 2012, by Robert R. Puente, President/Chief Executive Officer of the San Antonio Water System, a Texas municipal corporation, on behalf of said corporation.

*Pauline Villagran*

Notary Public, State of Texas

